IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8045 OF 2004

Santaji Subhash Patil & Ors. .. Petitioners

Versus

Shivaji University .. Respondents

Mr.Bharat Joshi, Sangramsinh Yadav, Ganbawle for petitioners

None for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 5TH OCTOBER 2004.

P.C.

1. Petitioners are four students of Third year Engineering faculty of Shivaji University (respondent herein). Having cleared first year of Engineering course, as per the University Rules, according to them they were admitted in

the third year. However, petitioners have not cleared 1-3 papers of second year engineering. It is their case that students are declared failed in third year if they fail in more than three subjects in the third year and upto three subjects in the second year.

2. It is there case that by an order dated 29th September 1998, respondents had formulated a scheme of "*carry on*" for third year studies of all branches of the faculty of engineering. According to them, as per this scheme, students of third year engineering branch in pre-revised course were permitted to and were allowed to seek admission in B.E. part I and II from academic year 1998-99 as regular students despite their failure in their examination of third year and second year in this Academic year. It is their case that there was no qualification attached to the said carry on scheme and concession granted to third year students was unconditional. Several students have taken advantage of the said scheme and completed their graduation in engineering from respondent University.

3. It is their case that the scheme was continued for further academic years. This was for the purpose of enabling students of third year to clear their examinations as per the pre-revised syllabus and not compelling them to study new syllabus in the final year of engineering course.

4. The grievance of the petitioners in this petition is that by a letter dated 7th September 2004 Principals of affiliated Engineering colleges of respondent University have been intimated that students who have failed in third year engineering examination held in April/ May 2004 are allowed to take admission in B.E. Part I course with a clarification that such admissions will be given to those students who have cleared first year and second year engineering course. The petitioners submit that there is a change in the stand which has resulted in discrimination against the petitioners and other students who have failed in second year engineering in one or three subjects.

5. Now, there will be a change in the

engineering course syllabus for the final year B.E. and if all petitioners are not allowed to keep terms as regular students for B.E. Part I as per the carry on scheme, then they will be adversely affected. In other words, it is their grievance that this carry on scheme is now more or less discontinued or its application restricted to certain category of students and this violates the mandate of Article 14 of Constitution of India. It is also contrary to Maharashtra Universities Act, 1994.

6. Petitioners applied for continuation of the carry on scheme but there being no favourable response from the university, this petition under Article 226 of the Constitution of India had to be instituted.

7. We have heard Shri Joshi, learned Counsel appearing for petitioners and Shri Ketkar, learned Counsel appearing for respondent University.

8. Our attention has been invited by Shri Ketkar to several aspects of this scheme. Apart

from the fact that these are academic matters and decisions are taken by experts and unless they are demonstrated to be arbitrary, malafide or palpably irrational and illegal, jurisdiction under Article 226 of the Constitution of India cannot be exercised, even otherwise, this is not a case for our interference.

9. It has been pointed out to us that petitioners have not cleared second year. They have no vested right to seek admission to B,E. Part I. The carry on scheme, according to respondents is a concession and not a matter of right.

10. We cannot accede to the submissions of the petitioners that they are prejudiced merely because they are subjected to study upgraded/ new syllabus. The University has revised the course in the ascending order. Insofar as second year is concerned, revised syllabus was implemented in the academic year 2003-04. Petitioners and other similarly situated students appeared in second year exam in April 2003. Principals of all affiliated engineering colleges were informed

that university authorities accepted the revised syllabus at second year Engineering Part I and Part II and that revised syllabus of second year engineering Part I shall come into force from 2003-04 i.e. from July 2003 onwards. Revised syllabus for second year engineering part II came into force from second term i.e. January 2004 onwards. Two more chances will be given to the students of the pre-revised course to appear at the examination stipulated in the affidavit filed on behalf of the University. Thus, after appearing for second year examination in April 2003, petitioners and similarly situated students were given two additional chances to clear second year under pre-revised course. Therefore, apart from the fact that there is no vested right in matters of concessions, there is no substance in the grievance that syllabus being upgraded/ revised, petitioners are compelled to study them. The university has taken a conscious decision after intimating Principals of all affiliated engineering colleges. It has been pointed out in the affidavit filed on behalf of respondent in great deails as to how highest academic bodies of the University applied their mind to all aspects

of the carry on scheme. Our attention is also invited by Shri Ketkar to resolution on "carry on" scheme passed by the Board of Studies on 24th August 2004.

11. We are satisfied from the perusal of the aforesaid materials that petitioners cannot claim benefit or concessions under schemes of the present nature as of right. The decisions taken by academic bodies consisting of experts are not required to be interfered by this court merely because another view is possible. We are satisfied that petitioners having availed of the benefits of the scheme earlier and failing to clear the examination (SE) on earlier occasion cannot have a grievance if the University has restricted the same by the impugned order. The Resolution as passed does not allow candidates failed at earlier examinations to take admission in B.E.Part II course. The benefit of carry on scheme is thus limited to unsuccessful candidates of T.E. exam only. The decision is in Academic interest and for maintainance of educational standards. The respondent is fully empowered to take it. In the absence of any allegations of

arbitrariness or malafides we cannot exercise our writ jurisdiction under Article 226 of the Constitution of India in such matters.

12. There is no substance in this petition and it is accordingly dismissed.

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